No. 06-341

IN THE

Supreme Court of the United States

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER

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BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER

The Equal Employment Advisory Council respectfully submits this brief *amicus curiae*. Letters of consent from both parties have been filed with the Clerk of the Court. The brief urges reversal of the decision below and thus supports the position of Petitioner BCI Coca-Cola Bottling Company of Los Angeles before this Court.[1]

[1] Counsel for *amicus curiae* authored this brief in its entirety. No person or entity, other than the *amicus curiae*, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief.

INTEREST OF THE *AMICUS CURIAE*

The Equal Employment Advisory Council (EEAC) is a nationwide association of employers organized in 1976 to promote sound approaches to the elimination of discriminatory employment practices. Its membership includes over 310 major U.S. corporations. EEAC's directors and officers include many of the nation's leading experts in the field of equal employment opportunity. Their combined experience gives EEAC an unmatched depth of knowledge of the practical, as well as legal, considerations relevant to the proper interpretation and application of equal employment policies and practices. EEAC's members are firmly committed to the principles of nondiscrimination and equal employment opportunity.

EEAC's members are all employers subject to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, and other federal and state employment nondiscrimination laws. As potential defendants to claims of discrimination under Title VII, EEAC's members have a direct and ongoing interest in the issue presented before this Court concerning the circumstances under which an employer should be held liable for intentional discrimination based on the alleged bias of a subordinate employee who was not involved in the ultimate employment decision.

The court below held that an employer who is accused of intentional discrimination based on the bias of a subordinate employee who provided information leading to the challenged employment decision but was not involved in the decision itself can never obtain summary judgment unless it conducted an "independent investigation" to rule out any underlying unlawful motives on the subordinate employee's part. It thus permitted a discrimination claim to proceed, despite the plaintiff's failure to rebut the employer's legitimate, nondiscriminatory reason for its decision and regardless of the fact that the actual decisionmaker, who herself harbored

no discriminatory animus, never received any input or recommendation from the biased employee regarding what employment decision should be made.

Because of its interest in the application of the nation's fair employment laws, EEAC has filed over 570 briefs as *amicus curiae* in cases before the Supreme Court, the United States Courts of Appeals, and various state supreme courts. Thus, EEAC has an ongoing interest in, and a familiarity with, the legal and public policy issues presented to the Court in this case. Because of its significant experience in these matters, EEAC is well situated to brief this Court on the ramifications of the issues beyond the immediate concerns of the parties to the case.

STATEMENT OF THE CASE

Stephen Peters worked for Petitioner BCI Coca-Cola Bottling Company ("BCI") as a merchandiser at its Albuquerque, New Mexico location. *EEOC v. BCI Coca-Cola Bottling Co. of Los Angeles*, 450 F.3d 476, 478 (10th Cir. 2006), *cert. granted*, 127 S. Ct. 852 (2007). Peters, who is African-American, reported to Cesar Grado, the District Sales Manager, who is Hispanic. *Id.* Peters was supervised on a day-to-day basis by Jeff Katt, a white male. Katt, like Peters, reported directly to Grado. *Id.* While Grado did have general supervisory responsibilities over certain employees, he was "not authorized to discipline or terminate anyone." *Id.*

Among other things, Grado was responsible for scheduling merchandisers to service accounts within his territory. *EEOC v. BCI Coca-Cola Bottling Co. of Los Angeles*, 2004 U.S. Dist. LEXIS 28277, at *3 (D.N.M. June 10, 2004), *rev'd*, 450 F.3d 476 (10th Cir. 2006), *cert. granted*, 127 S. Ct. 852 (2007). In September 2001, Grado contacted Katt about asking Peters to work one of his regularly scheduled days off as a result of a coverage gap. *Id.* at *9. After being informed by Katt that he did not believe Peters would be willing to work

on Sunday, Grado contacted Patricia Edgar, BCI's Employee Relations Manager, in her Phoenix, Arizona office to discuss how to proceed. *Id.* at *10. Although Grado ordinarily would have discussed the issue with BCI's local human resources administrator, Sherry Pedersen, Pedersen was not in the office and thus Grado contacted Edgar in the Phoenix office instead. *Id.*

Grado informed Edgar that he suspected Peters would refuse to work and asked for advice on dealing with the situation. Edgar told Grado that if Peters refused to work and was unable to present a compelling reason for his refusal, Grado should explain that Peters was being given a direct order and that failure to comply would be considered insubordination and could lead to termination. *Id.* at *12.

Immediately after speaking with Edgar, Grado informed Peters he would be expected to work on the date in question. Peters said he could not work because he had unspecified "plans" that were "none of Grado's business." *Id.* Following Edgar's advice, Grado then gave Peters a direct order and told him he would be considered insubordinate and could be fired if he refused. Peters responded by saying, "Do what [you've] got to, and I'll do what [I've] got to." *Id.* at *13.

Grado relayed the substance of his exchange with Peters to Edgar. Edgar considered Peters to have engaged in insubordination, which under BCI's policy warranted immediate termination.[2] *Id.* at *7-*8. Before taking any action, however, Edgar asked the local human resources administrator to review Peters' personnel file, which showed a two-day disciplinary suspension and final warning for insubordination in connection with refusal to work on a scheduled day off two years earlier. *Id.* at *15. Based on Grado's description of

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[2] Under BCI's policy, "insubordination occurs when the employee knows that he is considered to be defying a direct order of the supervisor and that his conduct could lead to termination." *Id.* at *7-*8.

Peters' remarks and the information contained in Peters' personnel file, Edgar made the decision to terminate Peters' employment. She "understood that Peters had already been given more chances than the policy required on this issue, and that any action short of termination could set a bad precedent for BCI's stance on insubordination." *Id.* at *19. Grado was never asked for, and never offered, a discipline recommendation.

Peters filed a race discrimination charge with Respondent Equal Employment Opportunity Commission (EEOC), which eventually sued BCI on Peters' behalf. The agency claimed that Grado was racist, and presented evidence suggesting Grado treated African-Americans more harshly and made racially derogatory comments at work. *Id.* at *22. Although the EEOC conceded that Edgar, the actual decisionmaker, did not have a discriminatory animus, it nevertheless contended that since Grado *was* biased against African-Americans and Edgar's decision was based on his input, the company was liable for discrimination in violation of Title VII.

BCI moved for summary judgment, which the district court granted. The court observed:

> [W]hile the EEOC disputes whether BCI has come forward with a legitimate nondiscriminatory reason for its conduct, the Court believes that BCI's burden is one of production and not of persuasion. Thus, BCI need only articulate a legitimate nondiscriminatory reason for discharging Peters.

Id. at *29. Since Grado did not actually make the decision to terminate Peters, and because Edgar, the actual decisionmaker, had no discriminatory animus and was unaware of Peters' race at the time of discharge, the court concluded the EEOC had failed to prove BCI's proffered reason for termination was a pretext for race discrimination. *Id.* at *30.

The EEOC appealed to the Tenth Circuit, which reversed the district court's ruling and remanded the case for further proceedings. *EEOC v. BCI Coca-Cola Bottling Co. of Los Angeles*, 450 F.3d 476 (10th Cir. 2006), *cert. granted*, 127 S. Ct. 852 (2007). It found that summary judgment was inappropriate in the case, as a jury could reasonably conclude that Grado's bias drove the company's actions, even though he did not make the actual decision to terminate Peters' employment. The court observed, "[i]n the employment discrimination context, 'cat's paw' refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *Id.* at 484 (citation omitted).

Purporting to apply the Seventh Circuit's "causation" approach, the court concluded that an employer may be liable for discrimination under a cat's paw theory if "the biased subordinate's discriminatory reports, recommendation, or other actions caused the adverse employment action." 450 F.3d at 487 (citation omitted). BCI filed a petition for writ of certiorari, which this Court granted on January 5, 2007.

SUMMARY OF ARGUMENT

Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*, prohibits discrimination in the "terms, conditions or privileges of employment, *because of* such individual's race, color, religion, sex or national origin." 42 U.S.C. § 2000e-2(a)(1) (emphasis added). Plaintiffs alleging disparate treatment discrimination under Title VII bear the ultimate burden of proof and cannot, as a matter of law, prevail if they are unable to refute an employer's legitimate, nondiscriminatory reason for the challenged employment decision.

The rule applied by the court below impermissibly alters the standard of proof for intentional discrimination claims by

effectively eliminating a plaintiff's burden of showing, by a preponderance of the evidence, that the employer's stated reason for the challenged employment decision is false and a pretext for discrimination. Under the Tenth Circuit's analysis, if a plaintiff alleges discrimination resulting from the bias of a subordinate, non-decisionmaking employee, liability will attach unless the employer can demonstrate that it conducted an "independent" investigation which confirmed its decision was not caused by the alleged underlying bias. The court's rule, as applied, thus unquestionably conflicts with the legal principles established by this Court in *McDonnell Douglas*.

Requiring employers to question the motives of every person who reports wrongdoing so as to rule out any potential underlying bias would be hugely burdensome on employers and would undermine their efforts to proactively investigate and resolve incidents of workplace misconduct. Common sense suggests that the employer's job is to investigate the report and ascertain the facts for itself, rather than to question the motives of the informant. Real-world application of the rule articulated by the court below would severely impede employers' efforts to find and correct suspected misconduct and could create a chilling effect on employees' willingness to make legitimate complaints of workplace problems.

ARGUMENT

I. THE STANDARD APPLIED BY THE COURT BELOW FOR EVALUATING SO-CALLED "CAT'S PAW" SUBORDINATE BIAS DISCRIMINATION CLAIMS IS INCONSISTENT WITH WELL-ESTABLISHED PRINCIPLES OF TITLE VII LAW

The rule applied by the court below impermissibly alters the standard of proof for intentional discrimination claims by effectively eliminating a plaintiff's burden of proving, by a

preponderance of the evidence, that the employer's legitimate nondiscriminatory reason for the challenged employment decision is pretextual. It also would impose upon employers onerous new proof requirements that have no basis in Title VII jurisprudence. Accordingly, the approach advanced by the court below should be rejected by this Court.

A. The Burden-Shifting Analysis Established by This Court in *McDonnell Douglas Corp. v. Green* Sets Forth the Proper Standard for Evaluating Title VII Disparate Treatment Claims

Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*, makes it unlawful "for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin." 42 U.S.C. § 2000e-2(a)(1). While the burden of production of evidence under Title VII may shift between plaintiff and defendant, the ultimate burden of proving unlawful discrimination lies at all times with the individual asserting a violation of the Act. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

Under the burden-shifting analysis articulated by this Court in *McDonnell Douglas*, a plaintiff alleging intentional discrimination must prove, as a threshold matter, that he or she (1) is a member of a class of individuals protected by the Act; (2) is qualified for the employment opportunity in question; (3) was denied the opportunity; and (4) was treated less favorably than persons not of his or her protected class. *Id.* at 802.

After this initial showing, the burden of production of evidence shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employment decision. As this Court has held, the employer's obligation is to *articulate*

a legitimate, nondiscriminatory reason, not to affirmatively "*prove absence of discriminatory motive*." *Board of Trustees of Keene Coll. v. Sweeney*, 439 U.S. 24, 25 (1978) (*per curiam*) (emphasis added). Rather, the defendant "must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection." *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 255 (1981).

Once the employer presents a nondiscriminatory reason for the challenged action, the burden shifts back to the plaintiff to prove the employer's stated reason is not worthy of credence and is a pretext for unlawful discrimination. In this context:

> Pretext means a lie, specifically a phony reason for some action. . . . [P]retext for discrimination means more than an unusual act; it means something worse than a business error; "pretext" means deceit used to cover one's tracks.

Millbrook v. IBP, Inc., 280 F.3d 1169, 1175 (7th Cir. 2002) (internal quotations and citations omitted); *see also Reed v. Lawrence Chevrolet, Inc.*, 108 Fed. Appx. 393, 398 (7th Cir. 2004) ("In order to show pretext, moreover, the plaintiff must specifically rebut each legitimate, non-discriminatory reason given by the defendants for not hiring him"). A plaintiff who is unable to demonstrate pretext cannot succeed in his or her Title VII discrimination claim.

B. The Tenth Circuit's Rule Enables Plaintiffs To Circumvent Title VII's Pretext Proof Requirements

Under the Tenth Circuit's analysis, once a plaintiff alleges he or she was subjected to a discriminatory employment practice stemming from the bias of a subordinate, non-decision-making employee, liability will attach unless the employer can demonstrate– through proof of an "independent" investigation—that its decision was not caused by the alleged underlying bias. The burden of proof thus shifts from the

plaintiff to the employer to refute the discrimination claim without the plaintiff ever having to prove pretext. This result unquestionably conflicts with the legal principles established by this Court in *McDonnell Douglas* and therefore should be rejected by this Court.

The sole question before the Tenth Circuit below was whether the EEOC had presented sufficient evidence such that a reasonable jury could conclude BCI's stated reason was false and a pretext for unlawful discrimination. "Because the EEOC's pretext argument depends in part on a subordinate bias theory," the court found, "it must establish a genuine issue of material fact as to whether Mr. Grado's bias translated into discriminatory actions that caused Mr. Peters' termination." 450 F.3d at 490. It stated:

> [U]nder certain circumstances, a defendant may be held liable for a subordinate employee's prejudice even if the manager lacked discriminatory intent. . . . Twice we have held that a plaintiff could not prevail because the decisionmaker had conducted an independent investigation of the facts, rather than relying on the recommendation of the biased subordinate.

Id. at 485 (internal quotations and citations omitted). The court thus transformed the EEOC's obligation to prove pretext into a question of whether, under a subordinate bias theory, BCI could prove that the person responsible for making the termination decision had conducted an "independent investigation" prior to taking such action rather than merely "rubber-stamping" the recommendation of the allegedly biased subordinate employee.

While ostensibly endorsing the Seventh Circuit's standard for evaluating subordinate bias claims, the court below failed to properly apply the rule to the facts of this case. *See Lust v. Sealy, Inc.*, 383 F.3d 580 (7th Cir. 2004) (citing *Mateu-Anderegg v. School Dist. of Whitefish Bay*, 304 F.3d 618 (7th

Cir. 2002)). As the Seventh Circuit observed in *Mateu-Anderegg*:

> It is clear that, when the causal relationship between the [non-decisionmaker's] illicit motive and the employer's ultimate decision is broken, and the ultimate decision is clearly made on an independent and a legally permissible basis, the bias of the [non-decisionmaker] is not relevant. For instance, if objective information from sources other than the biased employee drive the adverse employment action, the subordinate's illicit motives are no longer relevant to the inquiry.

304 F.3d at 627 (internal quotations and citations omitted).

In this case, Edgar discharged Peters based on his (1) insubordinate remarks to Grado—remarks which Peters admitted making—and (2) prior insubordinate behavior under similar circumstances, as was documented in his personnel file. Edgar's decision therefore was based on a completely independent assessment of the facts and was made without any input, real or implied, from Grado. As such, BCI should have been insulated from liability stemming from Grado's alleged bias, since he was not responsible for Peters' discharge. Indeed, this Court's decision in *Reeves v. Sanderson Plumbing* "informs us that the person allegedly acting pursuant to a discriminatory animus need not be the 'formal decisionmaker' to impose liability upon an employer for an adverse employment action, *so long as the plaintiff presents sufficient evidence to establish that the subordinate was the one 'principally responsible' for, or the 'actual decisionmaker' behind, the action.*" *Hill v. Lockheed Martin Logistics Mgmt., Inc.*, 354 F.3d 277, 288-89 (4th Cir. 2004) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151-52 (2000)) (emphasis added), *cert. dismissed*, 543 U.S. 1132 (2005). Such a showing was neither made by the EEOC, nor required by the court below.

Although Peters questioned whether his remark was sufficient to constitute actionable insubordination, the district court found, and the Tenth Circuit agreed, his comment "*can only be interpreted* as defiance . . . ." 450 F.3d at 492. Furthermore, as the district court correctly observed, "Peters' subjective belief whether he committed insubordination is not relevant." *EEOC v. BCI Coca-Cola Bottling Co. of Los Angeles*, 2004 U.S. Dist. LEXIS 28277, at *39 (D.N.M. June 10, 2004), *rev'd*, 450 F.3d 476 (10th Cir. 2006), *cert. granted*, 127 S. Ct. 852 (2007); *see also Pippin v. Burlington Res. Oil & Gas Co.*, 440 F.3d 1186, 1196-97 (10th Cir. 2006) ("It is the perception of the decisionmaker which is relevant, not plaintiff's perception of himself") (citation omitted).

It is well-established that "Title VII charges neither this Court nor the jury to act as a 'super personnel department' that second guesses employers' business judgments." *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1203 (10th Cir. 2006); *see also Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 259 (1981); *Pippin v. Burlington Res. Oil & Gas Co.*, 440 F.3d 1186, 1197 (10th Cir. 2006). As the Eleventh Circuit correctly observed:

> [A] defendant may terminate an employee for a good or bad reason without violating federal law. We are not in the business of adjudging whether employment decisions are prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision. Therefore, even if the Commissioners did in fact merely "rubber-stamp" [the challenged employment decision], this alone is insufficient to show pretext for discrimination. This is not a case in which a plaintiff has created a jury issue with respect to discrimination on the part of a dominant decision-maker whose decision was rubber-stamped by others.

Wascura v. City of S. Miami, 257 F.3d 1238, 1247 (11th Cir. 2001) (internal quotations and citations omitted).

Whether or not the court below agreed with the wisdom of Edgar's decision, the question before it was whether the EEOC produced any evidence proving Edgar's stated reason was pretext, *i.e.*, not merely "business error" but rather "deceit used to cover [her] tracks." *Millbrook*, 280 F.3d at 1175. "Perhaps this investigation was less than optimal, and conceivably it fell short in some respects, leaving stone[s] unturned. However, Defendant's investigation need not be perfect." *Haughton v. Orchid Automation*, 2006 U.S. App. LEXIS 29068, at *23 (6th Cir. 2006) (internal quotation and citation omitted). As this Court has observed repeatedly, "[t]he broad, overriding interest [of Title VII], shared by employer, employee, and consumer, is efficient and trustworthy workmanship assured through fair and . . . neutral employment and personnel decisions. . . . The statute was not intended to diminish traditional management prerogatives." *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 259 (1981) (internal quotations and citations omitted).

Even though the EEOC never was able to demonstrate that Edgar's reason for discharging Peters was false—indeed, Peters admitted making the remark that caused his discharge—the court nevertheless allowed the agency's claim to proceed to trial based simply on its own judgment that the company's investigation was deficient. It focused improperly on the quality of the employer's decisionmaking process, rather than on the veracity of its stated reason and, in effect, relieved the EEOC of its burden, under *McDonnell Douglas*, "'to demonstrate by competent evidence that the presumptively valid reasons for [the employment action] were in fact a coverup for a racially discriminatory decision.'" *Haughton v. Orchid Automation*, 2006 U.S. App. LEXIS 29068, at *17 (quoting *McDonnell Douglas*, 411 U.S. at 805). Because the decision below impermissibly conflicts with the standard of proof articulated by this Court in *McDonnell Douglas*, it should be reversed.

II. REQUIRING EMPLOYERS TO EXAMINE THE MOTIVES OF EVERY INFORMANT OF POSSIBLE MISCONDUCT WOULD UNDERMINE EFFORTS TO PROACTIVELY INVESTIGATE AND RESOLVE SUCH INCIDENTS

Large employers often delegate initial investigations of workplace misconduct to local human resources personnel, who in turn report their findings to a more senior manager who may work in a different city or state. Often, the individual making the employment decision is not the same person who conducted the initial investigation. A rule requiring employers to question the motives of every person who reports wrongdoing so as to rule out any potential underlying bias would be hugely burdensome on such employers and invariably would undermine their efforts to proactively investigate and resolve incidents of workplace misconduct. It would divert attention away from the actual incident being investigated, and would encourage employers to embark on fishing expeditions to uncover any and all possible workplace bias, whether or not such bias is directly related to the underlying investigation.

A conscientious employer has both an incentive and an affirmative obligation to respond appropriately to complaints of workplace bias. Indeed, as this Court observed in *Faragher v. City of Boca Raton*:

> Although Title VII seeks to make persons whole for injuries suffered on account of unlawful employment discrimination, its 'primary objective,' like that of any statute meant to influence primary conduct, is not to provide redress but to avoid harm . . . . It would therefore implement clear statutory policy and complement the Government's Title VII enforcement efforts to recognize the employer's affirmative obligation to prevent violations and give credit here to employers who make reasonable efforts to discharge their duty. Indeed, a theory of vicarious liability for misuse of supervisory

> power would be at odds with the statutory policy if it failed to provide employers with some such incentive.

524 U.S. 775, 805-06 (1998) (internal quotations and citations omitted); *see also Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 764 (1998) ("Title VII is designed to encourage the creation of antiharassment policies and effective grievance mechanisms. Were employer liability to depend in part on an employer's effort to create such procedures, it would effect Congress' intention to promote conciliation rather than litigation in the Title VII context") (citation omitted).

Courts should not prevent employers from taking action in response to clear misconduct based on the remote possibility an informant harbors a discriminatory animus in the absence of more than a mere theoretical nexus between the alleged bias and the employment decision. This is particularly true where, as here, the employee facing disciplinary action *never once* previously complained of alleged bias on the part of the subordinate employee.

It stands to reason that if the discriminatory actions of a low-level supervisor are so pronounced that they could infect an innocent, third party's decisionmaking process, a reasonable employee would bring the supervisor's misconduct to the employer's attention. Employers who have meaningful complaint procedures in place should not be penalized for failing to investigate potential bias where the alleged victim failed to take advantage of those procedures. Punishing an employer whose decisionmaker harbored no discriminatory animus and had no reason to suspect bias on the part of a non-decisionmaking subordinate would eliminate any incentive a plaintiff might otherwise have for reporting alleged discrimination, and thus would frustrate the primary aims and purpose of Title VII.

III. SUBJECTING EMPLOYEES REPORTING MISCONDUCT TO "BIAS" EXAMINATIONS WOULD CREATE A CHILLING EFFECT ON THEIR WILLINGNESS TO MAKE LEGITIMATE COMPLAINTS AND THUS WOULD DISCOURAGE CONSISTENT APPLICATION OF WORKPLACE RULES

Employers generally do not know why individuals report suspected wrongdoing. Many companies—particularly those who employ large numbers of employees and/or have facilities in many different states—often receive information regarding potential employee wrongdoing from various sources, including confidential "tip" lines and reports from other employees. Indeed, many companies encourage their employees to report alleged misconduct, such as harassment or other forms of discrimination, by such means.

Unfortunately, however, it often is difficult to persuade employees to come forward with reports of suspected wrongdoing or to participate in investigations of workplace misconduct. This reluctance may be due to several factors, such as fear of retaliation by the accused wrongdoer or general aversion or apathy towards participating in the investigative process. If already reluctant employees knew that by reporting alleged wrongdoing they would potentially be exposing themselves to an investigation into their own motives, they would be even less likely to step forward. This result could occur not only in discrimination cases, but also in situations involving other types of employee misconduct, such as fraud, theft or violence at work.

As a practical matter, a rule that effectively discourages individuals from reporting suspected wrongdoing would result in employers learning about far fewer problems at work, and thus having less of an opportunity to correct those problems and prevent future occurrences. Not only would such a result be at odds with the aims and objectives of Title

VII, it would lead ultimately to less productive and emotionally healthy workplaces.

CONCLUSION

For all of the foregoing reasons, we respectfully request that this Court reverse the lower court's ruling and affirm the decision of the district court.

Respectfully submitted,

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